

# NEW YORK STATE DEPARTMENT OF HEALTH

An Invitation for Bids  
For  
Maintenance and Repair Services for  
Refrigeration Equipment and Environmental Rooms  
At the Wadsworth Center, Biggs Laboratories  
Empire State Plaza, Albany, NY  
IFB No.0603281111

Bid Opening: August 4, 2006

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## DESIGNATED CONTACTS:

Pursuant to State Finance Law §§ 139-j and 139-k, the Department of Health identifies the following designated contacts to whom all communications attempting to influence this procurement must be made:

William Stubblebine (518) 474-1002

Daniel Dearstyne (518) 474-1467

Margaret Geraldson (518) 474-1469

## Permissible Subject Matter Contacts:

Pursuant to State Finance Law § 139-j(3)(a), the Department of Health also identifies the following allowable contacts for communications related to the following subjects:

Submission of written bids or bids:

William Stubblebine

Submission of Written Questions:

William Stubblebine

Participation in the Site visit:

William Stubblebine/Daniel Dearstyne

Debriefings:

William Stubblebine

Negotiation of Contract Terms after Award:

William Stubblebine

*For further information regarding this legislation, see the Lobbying Statute summary in Section E, 10 of this solicitation.*

NEW YORK STATE DEPARTMENT OF HEALTH

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**A. INTRODUCTION**

The New York State Department of Health, Wadsworth Center, is seeking to enter into a contract for preventive maintenance and repair services for all refrigerated equipment and environmental rooms located at the Biggs Laboratory, Wadsworth Center, (WC) Empire State Plaza, Albany, NY

NOTE: Due to the complex nature of the facility, a site visit is **MANDATORY** prior to submitting a bid. This site visit will take place on July 14, 2006. Please contact Margaret Geraldson at (518)474-1469 to confirm your attendance.

Appropriate Hazard Communication Training will be provided by the Wadsworth Center Safety and Security Office.

**B. BACKGROUND**

The Biggs Laboratory, Wadsworth Center of the New York State Department of Health combines basic and applied research and education in biomedical and environmental sciences with a public health mission of clinical and environmental testing and quality assurance.

Located in the Empire State Plaza, Albany, NY, it is the most comprehensive public health laboratory in the nation. The center responds to present and emerging public health threats; develops and applies the most advanced technologies and methods to ensure rapid, accurate detection of disease; and, through licensure and training, assures high quality performance of clinical and environmental laboratories and tissue banks providing services to New Yorkers.

The Empire State Plaza Biggs Laboratory totals 500,000 gross square feet and includes the Center's administrative and support offices, its Division of Environmental Disease Prevention, Genetic Disorders, Molecular medicine and Laboratory Operations.

**C. DETAILED SPECIFICATIONS**

1. The Contractor shall provide two full time, dedicated service technicians who will remain on site for the duration of the work day. In the event that one or both technicians are either sick or unable to work for any reason, the replacement personnel must have the same certification as the previous technician or technicians. All work, except for emergency repairs, shall be performed during normal business hours (i.e. Monday through Friday, 8:00 AM to 4:00 PM except for State Holidays). Service

Technicians will be required to sign in and out each day with the Facilities Management Office.

2. Response to emergency calls shall be provided within one hour from when the service call is made. Emergency call shall be made at no additional cost to the State. Contractor shall provide a staffed 24 hour a day answering service to receive emergency calls and direct repair personnel.
3. All emergency responses shall be made by the same dedicated service technicians as outlined in Item #1 above. Once an emergency call has begun, the Contractor shall provide continuous effort until the problem is resolved.
4. The WC shall provide all materials, parts, replacement components and refrigerants pertinent to maintenance and repair.
5. The Contractor shall be completely responsible for all work including damaged or lost of property caused by his failure to take appropriate action. This shall include reimbursement to the State for repair of any equipment damaged or lost material as a result of the Contractor's error or omission.
6. The Contractor's personnel shall respond to and work from standard work order forms issued by the WC.
7. The Contractor shall not be reimbursed for any travel or other miscellaneous expenditures.
8. Contractor's personnel shall wear uniforms provided by the Contractor and approved by the Director of Facilities Management. Such uniforms shall bear the name of the Contractor's firm and the name of the technician.
9. The Director of Facilities Management, upon prior written notice, may alter or modify the hours of the shift within one hour of the hours outlined.
10. The Director of Facilities Management reserves the right to stop work at any time it is determined the Contractor is incapable of performing to the satisfaction of the State of New York.
11. The New York State Department of Health, Wadsworth Center, reserves the right to immediately remove from performance of contract activities, an employee of the Contractor, for any reason including failure to perform work in a satisfactory fashion. The designated representative for the

Department of Health is the Director of Facilities Management.

12. Prospective Contractors shall note that parking permits are not available and the technicians must obtain their own parking arrangements. The State will not be responsible for any parking costs.
13. The Wadsworth Center will provide the Contractor's Service Technicians with any required hand tools needed to perform the contracted services.
14. The Contractor shall determine the condition of all refrigeration equipment, freezers and walk in environmental rooms and shall separately inventory all equipment within thirty (30) days of contract award. The Contractor shall provide additional technicians during this initial task. The Contractor shall then recommend repairs to be made, shall develop a preventive maintenance schedule and shall recommend to the WC Director of Facilities Management a suitable list of parts to be kept available to service the equipment. All equipment inventories, maintenance schedules and parts inventories are subject to the approval of the Director of Facilities Management.
15. The Contractor shall provide monthly documentation, in whatever electronic or non-electronic format specified by the Director of Facilities Management, showing the equipment name, property tag number, date of service, type of service, routine or scheduled, and technician to the WC Director of Facilities Management or his Designee.

Minimum duties to be performed:

- A) Daily walk thru to check on environmental rooms on B, C, D, and E levels, to make sure alarms are in proper operation and rooms are proper temperatures.
- B) Quarterly preventive maintenance on all facility environmental rooms
- C) Yearly oil test on all compressors for environmental rooms
- D) Yearly clean water tube condensers for environmental rooms
- E) Monthly PM on all Liebert units
- F) Monthly PM on all A/C units
- G) Quarterly PM on all Ultra Lows
- H) Quarterly PM on all Chillers
- I) Quarterly PM on Singer A/C units, located above ceiling panels
- J) Quarterly PM on ice machines

## **PREVENTIVE MAINTENANCE SCOPE OF WORK**

### **MONTHLY**

#### **LIEBERT UNITS**

- check blower belts
- clean humidifier pan
- change air filters
- check refrigerant pressures
- check condensate pumps
- oil motors
- check alarm systems

#### **SINGER A/C UNITS**

- change air filters
- check condensate pumps
- check refrigerant pressures
- oil fan motors

#### **CARRIER A/C UNITS**

- change air filters
- check blower belt
- oil motors and bearings
- check refrigerant charge
- check condensate pumps

### **QUARTERLY**

#### **ENVIRONMENTAL ROOMS**

- check oil level in compressors
- check refrigerant charge
- oil fan motors
- tighten electrical connections
- calibrate electronic controls
- calibrate pneumatic controls
- clean humidifier float assembly
- clean squirrel cages
- check alarm operation
- check indication light tubes
- record operation pressures

#### ULTRA LOWS

- clean condenser
- check refrigerant pressure and record
- calibrate temperature controls
- check alarm system

#### **QUARTERLY**

##### CHILLERS

- oil pumps
- check electrical connections
- check charge, pressures and record

##### ICE MACHINES

- clean evaporator plates with solution
- check charge, pressures and record
- clean condensers
- check electrical connections
- check auger operation
- check/replace supply water filter

#### **YEARLY**

##### ENVIRONMENTAL ROOMS

- clean water cooled condensers
- take compressor oil sample

## EQUIPMENT LIST

Description	Quantity
Environmental Rooms	93
Ultra Low Temp Units (-100F Biological Freezers)	90
Refrigerated Incubators (Heated)	125
Refrigerated Water Baths	69
HPLC Wisp Module Coolers	12
Microscope Chillers	9
NesLab Turbo Pump Chiller	10
Cyro-Cut Tissue Slicer	9
High RPM Centrifuge	56
Gas Chromatograph	2
Fraction Collector	1
Liquid Scintillation Counter	6
Table Top Centrifuge	37
Whirlpool Ice Machines	1
Reach-In Coolers	49
Carrier A/C Units (5 ton)	3
Refrigerators/Freezers	171
Condensate Freeze Traps	8
Liebert Environmental Unit	5
Singer Package A/C Unit	6
Explosion Proof Refrigerators	25
Water Fountains (Drinking)	40
Portable A/C Units	7
Upright Freezers	122
Liquid Nitrogen Freezers	4
Carrier 19DA21C4 Centrificals	1
Deep Vacuum Freeze Dryers	10
Scottman Ice Machine	6
Air Dryer (for microscopes)	2
Neslab Chiller HZ200	3
Polyscience Immersion Chiller	1
Revco Reach in Freezer	<u>6</u>
	989



#### **D. BID REQUIREMENTS**

- Copies of all necessary permits, licenses and other forms of documentation required to comply with all applicable Federal, State and local laws, rules and regulations must be submitted with the bid. Contractor must submit copies of all permits and licenses on each contract renewal date or as they are renewed after expiration.
- A list of personnel to be assigned to this contractor. Minimum requirements for each service technician assigned to this contract are:
  - 1.) Two years college training or equivalent in refrigeration and air conditioning as mechanics.
  - 2) Five (5) years minimum, 10 year preferred, refrigeration experience (Please list references)
  - 3) Five (5) years minimum, 10 year preferred, A/C experience (Please list references)
  - 4) Five (5) years minimum, 10 year preferred, experience on Cascade Systems (Please list references)
  - 5) Five (5) years minimum, 10 year preferred, working experience with the following refrigerants: Flammable gas, R290, R1140, R170, R13, R13B1, R503 (Please list references)

Technicians must also possess computer experience to maintain inventory control and machine history documentation of all work performed.

Technicians must have certification from Revco/Linberg (attach copy).

Technicians must have Liebert Air Conditioning certification (attach copy).

CFC Certification for technicians working in the facility (attach copy)

- A list of at least five (5) institutions that contractor has been currently servicing. These institutions must be receiving services similar to those

required in this IFB. Please submit names and telephone number of the facility representative to contact. This list will be kept confidential.

- Documentation illustrating the time the bidder has been in business performing similar work, the size of the facility(ies) and the number of personnel employed.

### Maintenance Tracking

Describe in specific technical terms the methods used to track the maintenance of equipment, including equipment identification, PM tracking, repair tracking, ability to provide required and ad hoc reports, electronic submission of reports, identification of parts, labor, and technician resource usage.

### Preventive Maintenance Program

Describe in detail the plan to provide preventive maintenance. Include detailed schedule of PM's by equipment type. Justify the frequency of PM service and the nature of the work with reference to manufacturer's guidelines and actual experience at similar locations.

## 2. METHOD OF AWARD

- a. All proposals received shall be subject to an evaluation by the Department of Health

#### Vendor Selection

The evaluation of the bids will include, but not be limited to the following considerations:

Only vendors who have completed the **MANDATORY** site visit will be considered. All bidders will complete this site visit at once.

At the discretion of the Department of Health, all bids may be rejected. Only one contract will be awarded as a result of this IFB.

The evaluation of the bids will include the following pass/fail items:

<b><u>Technical Requirements -</u></b>	<b>Pass/Fail</b>
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- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>▪ Copies of all necessary permits, licenses and other forms of documentation required to comply with all applicable Federal, State and local laws, rules and regulations must be submitted with the bid. Contractor must submit copies of all permits and licenses on each contract renewal date or as they are renewed after expiration.</li><li>▪ A list of personnel to be assigned to this contractor. Minimum requirements for each service technician assigned to this contract are:<ol style="list-style-type: none"><li>1.) Two years college training or equivalent in refrigeration and air conditioning as mechanics.</li><li>2) Five (5) years minimum, 10 year preferred, refrigeration experience (Please list references)</li><li>3) Five (5) years minimum, 10 year preferred, A/C experience (Please list references)</li><li>4) Five (5) years minimum, 10 year preferred, experience on Cascade Systems (Please list references)</li><li>5) Five (5) years minimum, 10 year preferred, working experience with the following refrigerants: Flammable gas, R290, R1140, R170, R13, R13B1, R503 (Please list references)</li></ol></li></ul> |  |
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CFC Certification for technicians working in the facility (attach copy)

A list of at least five (5) institutions that contractor has been currently servicing. These institutions must be receiving services similar to those required in this IFB. Please submit names and telephone number of the facility representative to contact. This list will be kept confidential.

Documentation illustrating the time the bidder has been in business performing similar work, the size of the facility (ies) and the number of personnel employed.

**Maintenance Tracking - Pass/Fail**

Describe in specific technical terms the methods used to track the maintenance of equipment, including equipment identification, PM tracking, repair tracking, ability to provide required and ad hoc reports, electronic submission of reports, identification of parts, labor, and technician resource usage.

**Preventive Maintenance Program - Pass/Fail**

Describe in detail the plan to provide preventive maintenance. Include detailed schedule of PM's by equipment type. Justify the frequency of PM service and the nature of the work with reference to manufacturer's guidelines and actual experience at similar locations.

Bids will be evaluated by two separate Wadsworth Center review committees, one for technical and one for cost.

**E. ADMINISTRATIVE**

1. Issuing Agency

This IFB is a solicitation issued by the NYS Department of Health. The Department is responsible for the requirements specified herein and for the evaluation of all bids.

2. Inquiries

Any questions concerning this bid should be directed to:

William Stubblebine  
NYS Department of Health  
Wadsworth Center

Facilities Management, Room B730  
Empire State Plaza  
Albany, New York 12201-0509  
Phone (518) 474-1002

Questions need to be submitted by July 21, 2006. Questions and answers, as well as any IFB updates and/or modifications, will be posted on the Department of Health's website at [www.health.state.ny.us](http://www.health.state.ny.us) by July 24, 2006. Bidders wishing to receive these documents via mail must send a request, in writing, to the Department at the address above.

There will be a **Mandatory** bidder's site visit on July 14, 2006 at 10:00 am at the Wadsworth Center, Empire State Plaza, Albany, NY. Call Margaret at (518) 474-1469 to confirm your attendance.

3. Submission of Bids

Technical Requirement and Cost bid forms shall be sent in separate envelopes and labeled **TECHNICAL** AND **COST** on the outside of the envelope.

Interested vendors should provide 4 complete **Technical** bid packages (one original and 3 copies). **No cost information may be included in this section.**

Provide two complete **Cost** bid packages (one original and one copy).

Provide both telephone and e-mail contact points.

Provide proof of insurance requirements.

Responses to the bid should be directed to:

New York State Department of Health  
Wadsworth Center  
Facilities Management, Room B730  
Empire State Plaza  
Albany, NY 12201-0509

Attention:  
William Stubblebine

It is the bidders' responsibility to see that bids are delivered to Room B730 by **August 4, 2006, 10:00 am** at which time bids will be opened publicly. Late bids due to delay by the carrier or not received in the Department's mail room in time for transmission to Room B730 will not be considered. **Bid results will not be announced at this opening.**

The detailed bid sheet must be filled out in its entirety.

Responsible corporate officer for contract negotiation must be listed.

All evidence and documentation requested under Bid Requirements must be provided at the time the bid is submitted.

4. THE DEPARTMENT OF HEALTH RESERVES THE RIGHT TO

- a. Reject any or all bids received in response to this IFB.
- b. Waive or modify minor irregularities in bids received after prior notification to the bidder.
- c. Adjust or correct cost or cost figures with the concurrence of bidder if errors exist and can be documented to the satisfaction of DOH and the State Comptroller.
- d. Negotiate with vendors responding to this IFB within the requirements to serve the best interests of the State.
- e. Modify the detail specifications should no bids be received that meet all these requirements.
- f. If the Department of Health is unsuccessful in negotiating a contract with the selected vendor within an acceptable time frame, the Department of Health may begin contract negotiations with the next qualified vendor(s) in order to serve and realize the best interests of the State.

5. Payment

If awarded a contract, the Contractor shall submit invoices to the State's designated payment office:

William Stubblebine  
NYS Department of Health  
Wadsworth Center  
Facilities Management  
Room B730  
Albany, NY 12201-0509

Payment of such invoices by the State (NYS Department of Health) shall be made in accordance with Article XI-A of the New York State Finance Law. Payment terms will be: Thirty days after the month in which services have been rendered. **The monthly rate offered by the Contractor will remain in effect for the entire contract term, which is five years.**

6. Term of Contract

This agreement shall be effective upon approval of NYS office of State Comptroller, with anticipated start date of FEBRUARY 1, 2007

The term of the contract shall be for five (5) years. This agreement may be canceled at any time by the Department of Health giving to the contractor not less than thirty (30) days written notice that on or after a date therein specified this agreement shall be deemed terminated and canceled.

7. Debriefing

Once an award has been made, bidders may request a debriefing of their bid. Please note the debriefing will be limited only to the strengths and weaknesses of the bidder's bid, and will not include any discussion of other bids.

8. Vendor Responsibility Questionnaire

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. This IFB contains the "Vendor Responsibility Questionnaire" that all bidders must complete and submit with their bid. In addition to the questionnaire, bidders are required to provide the following with their bid:

- Proof of financial stability in the form of audited financial statements, Dunn & Bradstreet Reports, etc.
- Department of State Registration

- Certificate of Article of Incorporation, together with any and all amendments thereto; Partnership Agreement; or other relevant business organizational documents, as applicable
- N.Y.S. Dept. of Taxation and Finances" Contractor Certification Form ST-220

9. Executive Order 127

On June 16, 2003, Governor Pataki signed Executive Order 127 (EO 127) providing for additional disclosure in the State's procurement process. EO 127 requires that potential bidders and selected contractors disclose to the procuring agency all persons retained, employed or designated by or on behalf of any bidder to attempt to influence the procurement process, and whether that person has a financial interest in the procurement.

Bidders must complete a "Contractor Disclosure of Contacts" form for each individual entity they have retained, employed or designated to influence the procurement process. This form also must be completed for all references provided.

Bidders must also disclose any prior "non-responsibility determinations" as

**Failure to provide the form listed above with the bid may result in disqualification.**

10. Lobbying Statute

Chapter 1 of the Laws of 2005, as amended by Chapter 596 of the Laws of 2005, establishes significant changes to the development of procurement contracts with governmental entities.

In 2003, Governor Pataki issued Executive Order Number 127 *Providing for Additional State Procurement Disclosure* ("EO 127"), to increase disclosure requirements for persons and organizations contacting State government about procurement contracts and real estate transactions. It requires state agencies and certain public authorities to collect and record information from contractors seeking a procurement contract, and those who advocate on behalf of the contractors to influence procurement contracts. The goal of EO 127 is to enhance public confidence in the State's procurement process by making available to the public information pertaining to the lobbying efforts of those seeking state contracts from



state agencies and certain public authorities.

Chapter 1 of the Laws of 2005 expands upon EO 127 and the former lobbying statute. Among other things, the new law:

- a. makes the lobbying law applicable to attempts to influence procurement contracts once the procurement process has been commenced by a state agency, unified court system, state legislature, public authority, certain industrial development agencies and local benefit corporations;
- b. requires the above mentioned governmental entities to record all contacts made by lobbyists and contractors about a governmental procurement so that the public knows who is contacting governmental entities about procurements;
- c. requires governmental entities to designate persons who generally may be the only staff contacted relative to the governmental procurement by that entity in a restricted period;
- d. authorizes the Temporary State Commission on Lobbying to impose fines and penalties against persons/organizations engaging in impermissible contacts about a governmental procurement and provides for the debarment of repeat violators;
- e. directs the Office of General Services to disclose and maintain a list of non-responsible bidders pursuant to this new law and those who have been debarred and publish such list on its website;
- f. requires the timely disclosure of accurate and complete information from offerers with respect to determinations of non-responsibility and debarment;
- g. expands the definition of lobbying to include attempts to influence gubernatorial or local Executive Orders, Tribal–State Agreements, and procurement contracts;
- h. modifies the governance of the Temporary State Commission on lobbying;
- i. provides that opinions of the Commission shall be binding only on the person to whom such opinion is rendered;
- j. increases the monetary threshold which triggers a lobbyists obligations under the Lobbying Act from \$2,000 to \$5,000; and
- k. establishes the Advisory Council on Procurement Lobbying.

Generally speaking, two related aspects of procurements were amended:

(i) activities by the business and lobbying community seeking procurement contracts (through amendments to the Legislative Law) and (ii) activities involving governmental agencies establishing procurement contracts (through amendments to the State Finance Law).

Additionally, a new section 1-t was added to the Legislative Law establishing an Advisory Council on Procurement Lobbying (Advisory Council). This Advisory Council is authorized to establish the following model guidelines regarding the restrictions on contacts during the procurement process for use by governmental entities (see Legislative Law §1-t (e) and State Finance Law §139-j). In an effort to facilitate compliance by governmental entities, the Advisory Council has prepared model forms and language that can be used to meet the obligations imposed by State Finance Law §139-k, Disclosure of Contacts and Responsibility of Offerers. Sections 139-j and 139-k are collectively referred to as “new State Finance Law.”

It should be noted that while this Advisory Council is charged with the responsibility of providing advice to the New York Temporary State Commission on Lobbying (Lobbying Commission) regarding procurement lobbying, the Lobbying Commission retains full responsibility for the interpretation, administration and enforcement of the Lobbying Act established by Article 1-A of the Legislative Law (see Legislative Law §1-t (c) and §1-d). Accordingly, questions regarding the registration and operation of the Lobbying Act should be directed to the Lobbying Commission.

## **F. APPENDICES**

The following will be incorporated as appendices into any contracts resulting from this Invitation to Bid. This bid will, itself, be referenced as an Appendix of the contract.

- ❖ APPENDIX A - Standard Clauses for All New York State Contracts
- ❖ APPENDIX B - Invitation for Bid
- ❖ APPENDIX C - Bid  
The bidder's bid (if selected for award), including the Bid Form and all bid requirements.

❖ APPENDIX D - General Specifications

❖ APPENDIX E

Unless the CONTRACTOR is a political sub-division of New York State, the CONTRACTOR shall provide proof, completed by the Contractor's insurance carrier and/or the Workers' Compensation Board, of coverage for:

- ❖ Workers' Compensation, for which one of the following is incorporated into this contract as **Appendix E-1**:
  - **WC/DB-100**, Affidavit for New York Entities And Any Out-Of State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
  - **WC/DB-101**, Affidavit That An OUT-OF STATE Or FOREIGN EMPLOYER Working In New York State Does Not Require Specific New York State Workers' Compensation And/Or Disability Benefit Insurance Coverage; OR
  - **C-105.2**, Certificate of Workers' Compensation Insurance. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the **U-26.3**; OR
  - **SI-12** - Certificate of Workers' Compensation Self-Insurance, OR **GSI-105.2** - Certificate of Participation in Workers' Compensation Group Self-Insurance.
- Disability Benefits coverage, for which one of the following is incorporated into this contract as **Appendix E-2**:
  - **WC/DB-100**, Affidavit For New York Entities And Any Out-Of-State Entities With No Employees, That New York State Workers' Compensation And/Or Disability Benefits Insurance Coverage Is Not Required; OR
  - **WC/DB-101**, Affidavit That An OUT-OF-STATE or FOREIGN EMPLOYER Working In New York State Does Not Require Specific New York State Workers'

Compensation And/Or Disability Benefits Insurance  
Coverage; OR

- **DB-120.1** - Certificate of Disability Benefits Insurance  
OR the
  - **DB-820/829** - Certificate/Cancellation of Insurance;  
OR
  - **DB-155** - Certificate of Disability Benefits Self-  
Insurance
- Appendix H - Health Insurance Portability and Accountability  
Act (HIPAA) (if applicable)

## **Key Event Dates**

IFB Release..... June 30, 2006  
Bidders Site Visit ..... July 14, 2006  
Closing Date for Inquiries.....July 21, 2006  
Inquiries Answered by .....July 24, 2006  
Submission of Bids.....August 4, 2006  
Anticipated contract start date .....February 1, 2007

**STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$30,000 (State Finance Law Section 163.6.a).

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the

performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor

within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

#### **11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

(a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, AESOB, Albany, New York 12236.

#### **12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment,

employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
30 South Pearl St -- 7<sup>th</sup> Floor  
Albany, New York 12245  
Telephone: 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
30 South Pearl St -- 2nd Floor  
Albany, New York 12245  
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**22. PURCHASES OF APPAREL.** In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.



## APPENDIX D

### GENERAL SPECIFICATIONS

- A. By signing the "Bid Form" each bidder attests to its express authority to sign on behalf of this company or other entity and acknowledges and accepts that:

All specifications, general and specific appendices, including Appendix-A, the Standard Clauses for all New York State contracts, and all schedules and forms contained herein will become part of any contract entered, resulting from the Invitation for bid. Anything which is not expressly set forth in the specification, appendices and forms and resultant contract, but which is reasonable to be implied, shall be furnished and provided in the same manner as if specifically expressed.

- B. The work shall be commenced and shall be actually undertaken within such time as the Department of Health may direct by notice, whether by mail, telegram, or other writing, whereupon the undersigned will give continuous attention to the work as directed, to the end and with the intent that the work shall be completed within such reasonable time or times, as the case may be, as the Department may prescribe.
- C. The Department reserves the right to stop the work covered by this bid and the contract at any time that the Department deems the successful bidder to be unable or incapable of performing the work to the satisfaction of the Department and in the event of such cessation of work, the Department shall have the right to arrange for the completion of the work in such manner as the Department may deem advisable and if the cost thereof exceeds the amount of the bid, the successful bidder and its surety be liable to the State of New York for any excess cost on account thereof.
- D. Each bidder is under an affirmative duty to be informed by personal examination of the specifications and location of the proposed work and by such other means as it may select, of character, quality, and extent of work to be performed and the conditions under which the contract is to be executed.
- E. The Department of Health will make no allowances or concession to a bidder for any alleged misunderstanding or deception because of quantity, quality, character, location or other conditions.
- F. The bid price is to cover the cost of furnishing all of the said services, materials, equipment, and labor to the satisfaction of the Department of Health and the performance of all work set forth in said specifications.

- G. The successful bidder will be required to complete the entire work or any part thereof as the case may be, to the satisfaction of the Department of Health in strict accordance with the specifications and pursuant to a contract therefore.
- H. Contractor will possess, at no cost to the State, all qualifications, licenses and permits to engage in the required business as may be required within the jurisdiction where the work specified is to be performed. Workers to be employed in the performance of this contract will possess the qualifications, training, licenses and permits as may be required within such jurisdiction.
- I. **Non-Collusive Bidding**  
By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief:
  - a. The prices of this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
  - b. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly to any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition;
  - c. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

NOTE: Chapter 675 of the Laws of New York for 1966 provides that every bid made to the state or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the foregoing statement subscribed by the bidder and affirmed by such bidder as true under penalties of perjury.

A bid shall not be considered for award nor shall any award be made where (a), (b) and © above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state

and shall furnish with the bid a signed statement which sets forth in detail the reasons therefore. Where (a), (b) and © above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made or its designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder has published price lists, rates, or tariffs covering items being procured, has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or has sold the same items to other customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of the above quoted certification.

Any bid made to the State or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods, sold or to be sold, where competitive bidding is required by statute, rule or regulation and where such bid contains the certification set forth above shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

- J. A bidder may be disqualified from receiving awards if such bidder or any subsidiary, affiliate, partner, officer, agent or principal thereof, or anyone in its or its employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.
- K. The Department reserves the right to make awards within ninety (90) days after the date of the bid opening, during which period bids shall not be withdrawn unless the bidder distinctly states in the bid that acceptance thereof must be made within a shorter specified time.
- L. Work for Hire Contract  
Any contract entered into resultant from this invitation for bid will be considered a "Work for Hire Contract." The Department will be the sole owner of all source code and any software which is developed or included in the application software provided to the Department as a part of this contract.
- M. Technology Purchases Notification -- The following provisions apply if this Invitation for bid (IFB) seeks bids for "Technology"

1. For the purposes of this policy, "technology" applies to all services and commodities, voice/data/video and/or any related requirement, major software acquisitions, systems modifications or upgrades, etc., that result in a technical method of achieving a practical purpose or in improvements of productivity. The purchase can be as simple as an order for new or replacement personal computers, or for a consultant to design a new system, or as complex as a major systems improvement or innovation that changes how an agency conducts its business practices.
2. If this IFB results in procurement of software over \$20,000, or of other technology over \$50,000, or where the department determines that the potential exists for coordinating purchases among State agencies and/or the purchase may be of interest to one or more other State agencies, PRIOR TO AWARD SELECTION, this IFB and all responses thereto are subject to review by the New York State Office for Technology.
3. Any contract entered into pursuant to an award of this IFB shall contain a provision which extends the terms and conditions of such contract to any other State agency in New York. Incorporation of this IFB into the resulting contract also incorporates this provision in the contract.
4. The responses to this IFB must include a solution to effectively handle the turn of the century issues related to the change from the year 1999 to 2000.

N. YEAR 2000 WARRANTY

1. Definitions

For purposes of this warranty, the following definitions shall apply:

- a. Product shall include, without limitation: any piece or component of equipment, hardware, firmware, middleware, custom or commercial software, or internal components or subroutines therein which perform any date/time data recognition function, calculation, comparing or sequencing. Where services are being furnished, e.g. consulting, systems integration, code or data conversion or data entry, the term Product shall include resulting deliverables.
- b. Vendors Product shall include all Products delivered under this Agreement by Vendor other than Third Party Product.

- c. Third Party Product shall include products manufactured or developed by a corporate entity independent from Vendor and provided by Vendor on a non-exclusive licensing or other distribution Agreement with the third party manufacturer. Third Party Product does not include product where Vendor is: a) corporate subsidiary or affiliate of the third party manufacturer/developer; and/or b) the exclusive re-seller or distributor of product manufactured or developed by said corporate entity.

## 2. Warranty Disclosure

At the time of bid, Product order or Product quote, Vendor is required to disclose the following information in writing to Authorized User:

- a) For Vendor Product and for Products (including, but not limited to, Vendor and/or Third Party Products and/or Authorized User's Installed Product) which have been specified to perform as a system: Compliance or non-compliance of the Products individually or as a system with the Warranty Statement set forth below; and
- b) For Third Party Product Not Specified as Part of a System: Third Party Manufacturer's statement of compliance or non-compliance of any Third Party Product being delivered with Third Party Manufacturer/Developer's Year 2000 warranty. If such Third Party Product is represented by Third Party Manufacturer/Developer as compliant with Third Party Manufacturer/Developer's Year 2000 Warranty, Vendor shall pass through said third party warranty from the third party manufacturer to the Authorized User but shall not be liable for the testing or verification of Third Party's compliance statement.

An absence or failure to furnish the required written warranty disclosure shall be deemed a statement of compliance of the product(s) or system(s) in question with the year 2000 warranty statement set forth below.

## 3. Warranty Statement

Year 2000 warranty compliance shall be defined in accordance with the following warranty statement:

Vendor warrants that Product(s) furnished pursuant to this Agreement shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000, including leap year calculations. Where a purchase requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

In the event of any breach of this warranty, Vendor shall restore the Product to the same level of performance as warranted herein, or repair or replace the Product with conforming Product so as to minimize interruption to Authorized User's ongoing business processes, time being of the essence, at Vendor's sole cost and expense. This warranty does not extend to correction of Authorized User's errors in data entry or data conversion.

This warranty shall survive beyond termination or expiration of the

Nothing in this warranty shall be construed to limit any rights or remedies otherwise available under this Agreement.

- O. No Subcontracting  
Subcontracting by the contractor shall not be permitted except by prior written approval and knowledge of the Department of Health.
- P. Superintendence by Contractor  
The Contractor shall have a representative to provide supervision of the work which Contractor employees are performing to ensure complete and satisfactory performance with the terms of the Contract. This representative shall also be authorized to receive and put into effect promptly all orders, directions and instructions from the Department of Health. A confirmation in writing of such orders or directions will be given by the Department when so requested from the Contractor.
- Q. Sufficiency of Personnel and Equipment  
If the Department of Health is of the opinion that the services required by the specifications cannot satisfactorily be performed because of insufficiency of personnel, the Department shall have the authority to require the Contractor to use such additional personnel, to take such steps necessary to perform the services satisfactorily at no additional cost to the State.

R. Experience Requirements

The Contractor shall submit evidence to the satisfaction of the Department that it possesses the necessary experience and qualifications to perform the type of services required under this contract and must show that it is currently performing similar services. The Contractor shall submit at least two references to substantiate these qualifications.

S. Contract Amendments

This agreement may be amended by written agreement signed by the parties and subject to the laws and regulations of the State pertaining to contract amendments. This agreement may not be amended orally.

The contractor shall not make any changes in the scope of work as outlined herein at any time without prior authorization in writing from the Department of Health and without prior approval in writing of the amount of compensation for such changes.

T. Provisions Upon Default

1. The services to be performed by the Contractor shall be at all times subject to the direction and control of the Department as to all matters arising in connection with or relating to this Agreement.
2. In the event that the Contractor, through any cause, fails to perform any of the terms, covenants or promises of this agreement, the Department acting for and on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor
3. If, in the judgment of the Department of Health, the Contractor acts in such a way which is likely to or does impair or prejudice the interests of the State, the Department acting on behalf of the State, shall thereupon have the right to terminate this agreement by giving notice in writing of the fact and date of such termination to the Contractor. In such case the Contractor shall receive equitable compensation for such services as shall, in the judgment of the State Comptroller, have been satisfactorily performed by the Contractor up to the date of the termination of this agreement, which such compensation shall not exceed the total cost incurred for the work which the Contractor was engaged in at the time of such termination, subject to audit by the State Comptroller.

U. Termination Provision

Upon termination of this agreement, the following shall occur:

- ☐ Contractor shall make available to the State for examination all data, records and reports relating to this Contract; and
- ☐ Except as otherwise provided in the Contract, the liability of the State for payments to the Contractor and the liability of the Contractor for services hereunder shall cease.

V. Conflicts

If, in the opinion of the Department of Health, (1) the specifications conflict, or (2) if the specifications are not clear as to (a) the method of performing any part of the work, or as to (b) the types of materials or equipment necessary, or as to © the work required to be done in every such situation, the Contractor shall be deemed to have based his bid upon performing the work and furnishing materials or equipment in the most inexpensive and efficient manner. If such conflicts and/or ambiguities arise, the Department of Health will furnish the Contractor supplementary information showing the manner in which the work is to be performed and the type or types of material or equipment that shall be used.

W. MINORITY AND WOMEN OWNED BUSINESS POLICY STATEMENT

The New York State Department of Health recognizes the need to take affirmative action to ensure that Minority and Women Owned Business Enterprises are given the opportunity to participate in the performance of the Department of Health's contracting program. This opportunity for full participation in our free enterprise system by traditionally, socially and economically disadvantaged persons is essential to obtain social and economic equality and improve the functioning of the State economy.

It is the intention of the New York State Department of Health to fully execute the mandate of Executive Law, Article 15-A and provide Minority and Women Owned Business Enterprises with equal opportunity to bid on contracts awarded by this agency in accordance with the State Finance Law.

To implement this affirmative action policy statement, the contractor agrees to file with the Department of Health within 10 days of notice of award, a staffing plan of the anticipated work force to be utilized on this contract or, where required, information on the contractor's total work force, including apprentices, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the Department. The form of the staffing plan shall be supplied by the Department.



After an award of this contract, the contractor agrees to submit to the Department a work force utilization report, in a form and manner required by the Department, of the work force actually utilized on this contract, broken down by specified ethnic background, gender and Federal occupational categories or other appropriate categories specified by the Department.

X. Contract Insurance Requirements

- 1). The successful bidder must without expense to the State procure and maintain, until final acceptance by the Department of Health of the work covered by this bid and the contract, insurance of the kinds and in the amounts hereinafter provided, in insurance companies authorized to do such business in the State of New York covering all operations under this bid and the contract, whether performed by it or by subcontractors. Before commencing the work, the successful bidder shall furnish to the Department of Health a certificate or certificates, in a form satisfactory to the Department, showing that it has complied with the requirements of this section, which certificate or certificates shall state that the policies shall not be changed or canceled until thirty days written notice has been given to the Department. The kinds and amounts of required insurance are:
  - a). A policy covering the obligations of the successful bidder in accordance with the provisions of Chapter 41, Laws of 1914, as amended, known as the Workers' Compensation Law, and the contract shall be void and of no effect unless the successful bidder procures such policy and maintains it until acceptance of the work (reference Appendix E).
  - b) Policies of Bodily Injury Liability and Property Damage Liability Insurance of the types hereinafter specified, each within limits of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by one person in any one occurrence, and subject to that limit for that person, not less than \$1,000,000 for all damages arising out of bodily injury, including death at any time resulting therefrom sustained by two or more persons in any one occurrence, and not less than \$500,000 for damages arising out of damage to or destruction of property during any single occurrence and not less than \$1,000,000 aggregate for damages arising out of damage to or destruction of property during the policy period.

1. Contractor's Liability Insurance issued to and covering the liability of the successful bidder with respect to all work performed by it under this bid and the contract.
2. Protective Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this bid and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.
3. Automobile Liability Insurance issued to and covering the liability of the People of the State of New York with respect to all operations under this bid and the contract, by the successful bidder or by its subcontractors, including omissions and supervisory acts of the State.

Y. Certification Regarding Debarment and Suspension

Regulations of the department of Health and Human Services, located at Part 76 of Title 45 of the Code of Federal Regulations (CFR), implement Executive Orders 12549 and 12689 concerning debarment and suspension of participants in federal programs and activities. Executive departments and agencies shall participate in a government-wide system for non-procurement debarment and suspension. Executive Order 12689 extends the debarment and suspension policy to procurement activities of the federal government. A person who is debarred or suspended by a federal agency is excluded from federal financial and non-financial assistance and benefits under federal programs and activities, both directly (primary covered transaction) and indirectly (lower tier covered transactions). Debarment or suspension by one federal agency has government-wide effect.

Pursuant to the above-cited regulations, the New York State Department of Health (as a participant in a primary covered transaction) may not knowingly do business with a person who is debarred, suspended, proposed for debarment, or subject to other government-wide exclusion (including any exclusion from Medicare and State health care program participation on or after August 25, 1995), and the Department of Health must require its prospective contractors, as prospective lower tier participants, to provide the certification in Appendix B to Part 76 of Title 45 CFR, as set forth below:

- 1) APPENDIX B TO PART 76- CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION-LOWER TIER COVERED TRANSACTIONS

INSTRUCTIONS FOR CERTIFICATION

- a) By signing and submitting this bid, the prospective lower tier participant is providing the certification set out below.
- b) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered and erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- c) The prospective lower tier participant shall provide immediate written notice to the person to whom this bid is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
- d) The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, bid, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this bid is submitted for assistance in obtaining a copy of those regulations.
- e) The prospective lower tier participant agrees by submitting this bid that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- f) The prospective lower tier participant further agrees by submitting this bid that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions.
- g) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not

proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of parties excluded from Federal Procurement and Non-procurement programs.

- h) Nothing contained in the foregoing shall be construed to require establishment of a system or records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- i) Except for transactions authorized under paragraph 5 of these instruction, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

2) *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions*

- a) The prospective lower tier participant certifies, by submission of this bid, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department agency.
- b) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid.

Z. Confidentiality Clauses

- 1. Any materials, articles, papers, etc., developed by the Contractor under or in the course of performing this AGREEMENT shall contain the following, or similar acknowledgment: "Funded by the New York State Department of Health". Any such materials must be reviewed and approved by the State for conformity with the policies and guidelines for the New York State

Department of Health prior to dissemination an/or publication. It is agreed that such review will be conducted in an expeditious manner. Should the review result in any unresolved disagreements regarding content, the Contractor shall be free to publish in scholarly journals along with a disclaimer that the views within the Article or the policies reflected are not necessarily those of the New York State Department of Health. The Department reserves the right to disallow funding for any educational materials not approved through its review process.

2. Any publishable or otherwise reproducible material developed under or in the course of performing this Agreement, dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, shall be the sole and exclusive property of the State, and shall not be published or otherwise disseminated by the Contractor to any other party unless prior written approval is secured from the State or under circumstances as indicated in paragraph 1 above. Any and all net proceeds obtained by the Contractor resulting from any such publication shall belong to and be paid over to the State. The State shall have a perpetual royalty-free, non-exclusive and irrevocable right to reproduce, publish or otherwise use, and to authorize others to use, any such material for governmental purposes.
3. No report, document or other data produced in whole or in part with the funds provided under this Agreement may be copyrighted by the Contractor or any of its employees, nor shall any notice of copyright be registered by the Contractor or any of its employees in connection with any report, document or other data developed pursuant to this Agreement.
4. All reports, data sheets, documents, etc. generated under this contract shall be the sole and exclusive property of the Department of Health. Upon completion or termination of this Agreement the Contractor shall deliver to the Department of Health upon its demand all copies of materials relating to or pertaining to this Agreement. The Contractor shall have no right to disclose or use any of such material and documentation for any purpose whatsoever, without the prior written approval of the Department of Health or its authorized agents.
5. The Contractor, its officers, agents and employees and subcontractors shall treat all information, which is obtained by it through its performance under this Agreement, as confidential information to the extent required by the laws and regulations of the United States and laws and regulations of the State of New York.

6. All subcontracts shall contain provisions specifying;
  - a) that work performed by the subcontractor must be in accordance with the terms of this Agreement, and
  - b) that the subcontractor specifically agrees to be bound by the confidentiality provisions set forth in the Agreement between the State and the Contractor.
- AA. Provisions Related to New York State Executive Order Number 127
  - 1) The Contractor certifies that all information provided to the State with respect to New York State Executive Order Number 127, signed by Governor Pataki on June 16, 2003, is complete, true, and accurate.
  - 2) The State reserves the right to terminate this agreement in the event it is found that the certification filed by the Contractor, in accordance with New York State Executive Order Number 127, was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.
- BB. Provisions Related to New York State Procurement Lobbying Law
  - 1) The STATE reserves the right to terminate this AGREEMENT in the event it is found that the certification filed by the CONTRACTOR in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the STATE may exercise its termination right by providing written notification to the CONTRACTOR in accordance with the written notification terms of this AGREEMENT.

## EVALUATION PLAN for TECHNICAL REQUIREMENTS

All bids received shall be subject to an evaluation by two separate Wadsworth Center review committees. One will evaluate the technical requirements and the other will evaluate the cost. A composite score will be assigned to each bid.

Evaluation of bids will include the following pass/fail items:

### **Technical Requirements -**

### **Pass/Fail**

- Copies of all necessary permits, licenses and other forms of documentation required to comply with all applicable Federal, State and local laws, rules and regulations must be submitted with the bid. Contractor must submit copies of all permits and licenses on each contract renewal date or as they are renewed after expiration.
- A list of personnel to be assigned to this contractor. Minimum requirements for each service technician assigned to this contract are:
  - 1.) Two years college training or equivalent in refrigeration and air conditioning as mechanics.
  - 2) Five (5) years minimum, 10 year preferred, refrigeration experience (Please list references)
  - 3) Five (5) years minimum, 10 year preferred, A/C experience (Please list references)
  - 4) Five (5) years minimum, 10 year preferred, experience on Cascade Systems (Please list references)
  - 5) Five (5) years minimum, 10 year preferred, working experience with the following refrigerants: Flammable gas, R290, R1140, R170, R13, R13B1, R503 (Please list references)

Technicians must also possess computer experience to maintain inventory control and machine history documentation of all work performed.

Technicians must have certification from Revco/Linberg (attach copy).

Technicians must have Liebert Air Conditioning certification (attach copy).

CFC Certification for technicians working in the facility (attach copy)

A list of at least five (5) institutions that contractor has been currently servicing. These institutions must be receiving services similar to those required in this IFB. Please submit names and telephone number of the facility representative to contact. This list will be kept confidential.

Documentation illustrating the time the bidder has been in business performing similar work, the size of the facility (ies) and the number of personnel employed.

**Maintenance Tracking - Pass/Fail**

Describe in specific technical terms the methods used to track the maintenance of equipment, including equipment identification, PM tracking, repair tracking, ability to provide required and ad hoc reports, electronic submission of reports, identification of parts, labor, and technician resource usage.

**Preventive Maintenance Program - Pass/Fail**

Describe in detail the plan to provide preventive maintenance. Include detailed schedule of PM's by equipment type. Justify the frequency of PM service and the nature of the work with reference to manufacturer's guidelines and actual experience at similar locations.